IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 34085 of 2007(G)

PETITIONER:

K.L.JOHNY,
KANHUKKARAN HOUSE, PULPPALLY P.O.,
WAYANAD-673 579.

BY ADV. SMT.S.KARTHIKA
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SRI.T.R.RAJESH

RESPONDENTS:

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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, OFFICE OF THE REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, TRIVANDRUM.

2. THE STATE CO-OPERATIVE ELECTION COMMISSIONER, OFFICE OF THE CO-OPERATIVE ELECTION COMMISSION, TRIVANDRUM.

3. THE ADMINISTRATOR,
VYAPARI VYAVASAYI CO-OPERATIVE SOCIETY LTD.,
NO.210, PULPPALLY P.O., WAYANAD-673 579.

4. THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), WAYANAD, KALPETTA.

5. THE ASST. REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, SULTHANBATHERI.

R1, 42, R4 & R5 BY SR.GOVT.PLEADER SMT.ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.34085 of 2007-G

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Dated this the 4th day of December, 2007.

JUDGMENT

1. The petitioner was the President of the Committee of a co-operative society, which is now under the control of the third respondent as the Administrator. The Committee then in office resolved on 30-4-2007 to conduct election. That resolution in terms of Rule 35A of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the "Rules", ought to have been before 60 days of the date of expiry of the term of that committee, which was on 7-6-2007. Obviously, therefore, the resolution was not taken before 60 days of the date of expiry of the term of the committee. Relying on the decision of the Division Bench of this Court in George Abraham v. Asst. Registrar of Co-op. Societies

[1996 (1) KLT 669], it is argued that a similar provision in Rule 35 of the Rules was held to be directory and not mandatory. I may notice that Rule 35A came into force only on 12-2-2001 after the Division Bench rendered the aforesaid decision. Be that as it may, treating the fixation of 60 days as only directory and not mandatory, any failure to comply with the prescription as discernible from the face of the rule ought to be accompanied by sufficient grounds which could aid the competent authority or courts to conclude that the situation in hand cannot be treated as one where there is failure of authority to exercise appropriate power in discharge of duties as called for in terms of Rule 35A(1) of the Rules. In the case in hand, the only attribute is that the Secretary of the Society did not take appropriate steps. In George Abraham's case (supra), it can be seen that the facts were glaringly different, particularly that, certain notifications of the Government, even had meddled with the term of

office of the committee. So much so, the value of George Abraham's decision to be applied as a precedent in the case in hand appears to be minimal.

2.Yet, with the passage of time, it is pointed out that nearly six months of the Administrator being in office, no steps have been taken to conduct the election.

3.The learned Government Pleader, on the other hand, points out that enquiry under Section 66 of the Kerala Co-operative Societies Act is on and that the Department requires six months' time to complete those proceedings.

4.In all cases where Section 66 enquiry is on, it may not be necessary that due election to the committee of a co-operative society is to be held back because, democracy is the solemn foundation on which the co-operative societies are expected to work.

5.Under the aforesaid circumstances, this writ petition is disposed of directing that the Administrator and the Registrar will take appropriate action to have the election to the committee of the society in question conducted within an outer limit of three months from the date of receipt of a copy of this judgment, without fail. The pendency of any proceedings referable to Section 66 enquiry shall not stand in the way of conducting the election.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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